

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN MIKE TAYLOR**, on February 7, 2001 at 8:00 A.M., in Room 422 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mike Taylor, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Dale Berry (R)  
Sen. Edward Butcher (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Sam Kitzenberg (R)  
Sen. Dale Mahlum (R)  
Sen. Glenn Roush (D)

**Members Excused:** None.

**Members Absent:** Sen. Don Ryan (D)

**Staff Present:** Bart Campbell, Legislative Branch  
Kyanne Kelly, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 48, 2/4/2001; SB 298,  
2/4/2001; HB 138, 2/4/2001  
Executive Action:

HEARING ON SB 48

Sponsor: SENATOR MIKE SPRAGUE, SD 6, BILLINGS

Proponents: Kurt Alme, Department of Revenue  
Neil Peterson, Department of Revenue  
Kristi Blazer, Mt Beer and Wine Wholesalers Assoc  
Pat Montalban, Liquors Stores of Montana  
Dale Markovich, Roach & Smith Distribution, Inc  
Mike Parker, Beer & Wine Wholesaler  
Kurt Winegardner, Winegardner's Wines  
Brian Clark, Fun Beverage, Inc  
Julie Millam, Christian Coalition  
Brian Smith, Montana Brewers Association  
Robert Zucconi, Zeke's Distributing Company

Opponents: Timothy King, Representing himself  
Mona Jamison, Wine Institute  
David Scrimm, Representing himself  
Mary Arnold, Representing herself

Opening Statement by Sponsor:

*{Tape : 1; Side : A; Approx. Time Counter : 2.4}*

SENATOR MIKE SPRAGUE, SD 6, BILLINGS, said this bill has been reworked and has a new set of amendments, which he would let the proponents talk about. **EXHIBIT**(bus31a01)

Proponents' Testimony:

Kurt Alme, Department of Revenue, explained some of the points of this bill. **EXHIBIT**(bus31a02)

Neil Peterson, Department of Revenue, went through the exhibit handed out by Kurt Alme in more detail.

Kristi Blazer, Mt Beer and Wine Wholesalers Association, said the final amendments are made to fit Montana law. She said this is a clarification of law, not a change of law. She stated that the out-of-state shippers do not have a Montana liquor license so they are acting against Montana law. **EXHIBIT**(bus31a03)  
**EXHIBIT**(bus31a04)

**Pat Montalban, Liquors Stores of Montana**, said this bill will control sales to minors and help the liquor stores in Montana to make more money.

**Dale Markovich, Roach & Smith Distribution**, said in 1933 the three tier system was developed. Tier one was the brewer, tier two the wholesaler and tier three the retailer. He stated that one of the things the wholesaler does is collect taxes on the liquor. He pointed out that all states have the three tier system. **EXHIBIT (bus31a05)**

**Mike Parker, Beer & Wine Wholesaler**, said not to underestimate the impact of unregulated sales on the collection of revenue.

**Kurt Winegardner, Winegardner's Wines**, said it is the wholesalers' job to find hard-to-get wines for their customers.

**Brian Clark, Fun Beverage**, said the three tier system does work, when it is allowed to work. **EXHIBIT (bus31a06)**

**Julie Millam, Christian Coalition**, said they are concerned about underage access to alcohol over the internet.

**Brian Smith, Montana Brewers Association**, said it is the issue of underage access and taxes that he sees as a problem.

**Robert Zucconi, Zeke's Distributing Company**, supports this bill.

#### **Opponents' Testimony:**

**Timothy King, Representing himself**, said this bill would make him a felon for bringing wine into Montana for any reason. He said people are not ordering wine to circumvent the taxes or the distributors. He says there are small wineries that don't work through the distributors. **EXHIBIT (bus31a07)**

**Mona Jamison, Wine Institute**, said this bill is like killing a mosquito with a machete and a better proposal would be to find a way to deal with wine over the internet, rather than trying to stop it. She said if the problem is loss of tax revenue, then a bill should be introduced to capture the taxes over the internet. She also stated that the fines were extremely excessive, and you wouldn't know who to put the fines on. **EXHIBIT (bus31a08)**  
**EXHIBIT (bus31a09)**

**David Scrimm, Representing himself**, is strongly opposed to this bill. He likes a wide variety of wine and the internet allows him to taste a wide variety in a way that Montana liquor stores don't. **EXHIBIT (bus31a10)**

**Mary Arnold, Representing herself,** said this bill does not clearly address the problems it proposes to solve.

**Questions from Committee Members and Responses:**

**SENATOR DALE BERRY** asked where we would be if this bill were tabled.

**Mona Jamison** answered it would depend on what you view as the problem. The use of the internet is unclear under current Montana law.

**SENATOR ED BUTCHER** questioned how that could be done since the federal government prohibits any taxation of internet commerce.

**Mona Jamison** said she thinks it is a different issue here.

**Tom Ebzery** said they could capture it through a license fee.

**CHAIRMAN MIKE TAYLOR** asked about the amounts of the fines and the defining of the person as a felon.

**Kristi Blazer** said it was to make it something people really don't want to do.

**Neil Peterson** said the idea was to make the fine large enough to make it worth while to go out of state to enforce this.

**CHAIRMAN TAYLOR** asked what he would base his jurisdiction on going out of state.

**Neil Peterson** said it would be based on the 21<sup>st</sup> Amendment Enforcement Act.

**CHAIRMAN TAYLOR** asked if they would go after the owner of the winery.

**Neil Peterson** said it would be the person in the business of selling wine to the other state.

**CHAIRMAN TAYLOR** asked if he would put the president of the winery in jail.

**Neil Peterson** said it would be the person who makes the decision to violate Montana law.

**SENATOR VICKI COCCHIARELLA** asked why there was a mandatory minimum prison sentence.

**Neil Peterson** said they were looking at the severity of the fourth offense.

**Closing by Sponsor:**

*{Tape : 2; Side : A; Approx. Time Counter : 28.1}*

**SENATOR MIKE SPRAGUE, SD 6, BILLINGS**, closed without comment.

**HEARING ON SB 298**

**Sponsor:** **SENATOR BILL GLASER, SD 08, YELLOWSTONE COUNTY**

**Proponents:**      **Carl Schweitzer, Subcontractors Association**  
                         **Zack Pallister, Big Sky Plumbing and Heating**  
                         **Lynn Perkins, Fire Supression Systems**  
                         **Dennis Iverson, Electrical Contractors Association**

**Opponents:**      **Robert Throssell, Montana Technical council**  
                         **Joe Hansen, Edsall Construction**

**Informational Witness:** **Russ Katherman, Dept of Administration**

**Opening Statement by Sponsor:**

*{Tape : 2; Side : B; Approx. Time Counter : 6.9}*

**SENATOR BILL GLASER, SD 08, YELLOWSTONE COUNTY**, said this bill deals with the retainage on a construction project, which is that amount of money held by the owner to see that performance happens on a job. This bill says that the retainage is the property of the contractor or subcontractor and they ought to be compensated for somebody else using their money. It also changes the percentage amount you can withhold from 10% to 5%.

**Proponents' Testimony:**

**Carl Schweitzer, Subcontractors Association**, said when a subcontractor does the job he submits the bill to the owner or general contractor and gets paid 90% of what is owed. He stated that the other 10% should be put into an interest bearing account.

**Zack Pallister, Big Sky Plumbing and Heating**, said he has to pay his bills and his people, and the 10% that is held out is really his profit.

**Lynn Perkins, Fire Supression Systems**, said the 10% retainage is not fair.

**Dennis Iverson, Electrical Contractors Association**, said he supports this bill. He said it is basic economics; if you use someone else's money you have to pay for it.

**Opponents' Testimony:**

**Robert Throssell, Montana Technical Council**, opposed this bill because it impinges the right of people to contract, and also the money is really not the subcontractors money until the project is completed to the specifications. The subcontractors don't have to take the job, or else they can build the amount that will cover their expenses into the contract.

**Joe Hansen, Edsall Construction**, said this is a contractual issue and not something that should be legislated.

**Informational Witness: Russ Katherman, Department of Administration** said there would be no impact on public projects.

**Questions from Committee Members and Responses:**

**CHAIRMAN TAYLOR** said sometimes he has wanted to retain some of the total until there is satisfaction with the job.

**SENATOR GLASER** said he hadn't thought of the mechanics of the small home owner.

**Carl Schweitzer** said he would see residential construction as being excluded from this provision.

**Closing by Sponsor:**

***{Tape : 3; Side : A; Approx. Time Counter : 6.8}***

**SENATOR BILL GLASER, SD 08, YELLOWSTONE COUNTY**, said as things are now retention is 10%, no interest. He further stated that sometimes there is only about 4% profit, so the subcontractors have to wait for their profit until the retainage is released.

**Sponsor:** REPRESENTATIVE JOE MANGAN, HD 45, GREAT FALLS

**Proponents:** Chris Olson, Department of Commerce  
Bernie Harrington, MT Financial Service Centers  
Riley Johnson, Federation of Independent Business

**Opponents:** None

**Opening Statement by Sponsor:**

*{Tape : 3; Side : A; Approx. Time Counter : 10.5}*

REPRESENTATIVE JOE MANGAN, HD 45, GREAT FALLS, said this bill refers back to the deferred deposit loan act passed in the last session and is for further clarification. He stated that part of the purpose of this bill is to include electronic transactions into the Act. He said it also clarifies the collection of checks in the Deferred Deposit Loan Act.

**Proponents' Testimony:**

Chris Olson, Department of Commerce, said he supports the bill.

Bernie Harrington, MT Financial Service Centers, said they support this bill.

Riley Johnson, Federation of Independent Business, said he supports this bill.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

*{Tape : 3; Side : A; Approx. Time Counter : 20}*

REPRESENTATIVE JOE MANGAN, HD 45, GREAT FALLS, said this bill provides greater clarification to this consumer protection act.

**ADJOURNMENT**

Adjournment: 10:15 A.M.

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SEN. MIKE TAYLOR, Chairman

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KYANNE KELLY, Secretary

MT/KK

**EXHIBIT (bus31aad)**